IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

LETTERS PATENT APPEAL (STAMP) NO.24906 OF 2004
IN
WRIT PETITION NO.5974 OF 2004

Macchindra Khandu Waghmare).. Appellant

Versus

Rama Sopan Bansode and others).. Respondents

Mr.M.A.Patil for the Appellant.

CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.

DATED: 10TH FEBRUARY 2005

P.C.:

. By this Appeal under the Letters Patent of the Bombay High Court, order passed by the learned Single Judge is impugned on the ground that the refusal to interfere under Articles 226 and 227 of the Constitution of India recorded by the learned Single Judge was wrong. In view of the legal position that amendment to pleadings under the Civil Procedure Code can be made at any stage, the application was liable to be allowed and, therefore, the learned Court erred in law in not allowing the amendment. The learned Single Judge of this Court ought to have interfered with this order because it was an order which was in error of jurisdiction. Therefore, interference under Clause 15

of the Letters Patent Act is called for.

2. We see no reason to interfere in this Appeal for the reasons that : (i) the impugned order in the Petition before the learned Single Judge was an interlocutory order. Grant or refusal of amendment can always be a subject matter of substantive appeal; (ii) The refusal by the learned Single Judge to interfere was therefore a refusal to interfere with an interlocutory order and (iii) It cannot be said that this Court whether in Division Bench or Single Bench has no discretion under Article 226 or Article 227 to refuse to exercise that jurisdiction when such interlocutory orders are questioned. Since no injury of irrepairable nature is caused to the Petitioner by any of the impugned orders, we see no reason to interfere. Appeal dismissed.

3. In view of the Appeal being disposed of, nothing survives in Civil Application Nos.10 of 2005 and 11 of 2005 and both the Civil Applications are disposed of accordingly.